

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
PORTLAND DIVISION

PATRICK SHANE ARCHÉR,

Plaintiff,

v.

RICK ANGELOZZI, or assignees; **ROB WING**; and **SEAN E. McCALLISTER**,

Defendants.

Case No.: 1:11-cv-01125-AC

**OPINION AND ORDER ADOPTING
FINDINGS & RECOMMENDATIONS**

SIMON, District Judge.

Magistrate Judge John V. Acosta filed Findings and Recommendations in this case on January 2, 2013. Dkt. 38. Judge Acosta recommended that the court should grant Defendants' Motion to Dismiss, Dkt. 18, and dismiss Plaintiff's claims without prejudice. No party has filed objections.

Under the Federal Magistrates Act, the court may "accept, reject or modify, in whole or in part, the findings or recommendations made by the magistrate." 28 U.S.C. § 636(b)(1). If a party files objections to a magistrate's findings and recommendations, "the court shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made." *Id.*; Fed. R. Civ. P. 72(b)(3).

If, however, no objections are filed, the Magistrates Act does not prescribe any standard of review. In such cases, "[t]here is no indication that Congress, in enacting [the Magistrates Act] intended to require a district judge to review a magistrate's report[.]" *Thomas v. Arn*, 474 U.S.

140, 152 (1985); *see also United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003) (*en banc*) (court must review *de novo* magistrate’s findings and recommendations if objection is made, “but not otherwise”).

Although in the absence of objections no review is required, the Magistrates Act “does not preclude further review by the district judge[] *sua sponte* . . . under a *de novo* or any other standard.” *Thomas*, 474 U.S. at 154. Indeed, the Advisory Committee Notes to Rule 72(b) of the Federal Rules of Civil Procedure recommend that “[w]hen no timely objection is filed,” the court review the magistrate’s findings and recommendations for “clear error on the face of the record.”

No objections having been made, the court follows the recommendation of the Advisory Committee and reviews Magistrate Judge Acosta’s Findings and Recommendations for clear error on the face of the record. No such error is apparent. Accordingly, the court ADOPTS Magistrate Judge Acosta’s Findings and Recommendations, Dkt. 38.

IT IS SO ORDERED.

Dated this 11th day of February, 2013.

/s/ Michael H. Simon
Michael H. Simon
United States District Judge